

Farm Service Agency, USDA

§ 765.151

(1) A further increase in the interest rate results in a debt service margin of less than 110 percent; or

(2) The interest rate is equal to the interest rate currently in effect for the type of loan.

(c) Except as provided in paragraph (d) of this section, the Agency will increase the limited resource interest rate to the current interest rate for the type of loan, if the borrower:

(1) Purchases items not planned during the term of the loan;

(2) Refuses to submit information the Agency requests for use in reviewing the borrower's financial condition;

(3) Ceases farming, as described in § 765.253; or

(4) Is ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(d) If the borrower has limited resource interest rate loans that are deferred, the Agency will not change the interest rate during the deferral period.

§§ 765.52–765.100 [Reserved]

Subpart C—Borrower Graduation

§ 765.101 Borrower graduation requirements.

(a) In accordance with the promissory note and security instruments, the borrower must graduate to another source of credit if the Agency determines that:

(1) The borrower has the ability to obtain credit from other sources; and

(2) Adequate credit is available from other sources at reasonable rates and terms.

(b) The Agency may require partial or full graduation.

(1) In a partial graduation, all FLP loans of one type (i.e. all chattel loans or all real estate loans) must be paid in full by refinancing with other credit with or without an Agency guarantee.

(2) In a full graduation, all FLP loans are paid in full by refinancing with other credit with or without an Agency guarantee.

(3) A loan made for chattel and real estate purposes will be categorized according to how the majority of the loan's funds are expended.

(c) The borrower must submit all information that the Agency requests in conjunction with the review of the borrower's financial condition.

(d) The Agency may provide a borrower's prospectus to lenders in an attempt to identify sources of non-Agency credit and assess the lenders' interest in refinancing the borrower's loan. The Agency will notify the borrower when the borrower's prospectus is provided to one or more lenders.

(e) If a lender expresses an interest in refinancing the borrower's FLP loan, the borrower must:

(1) Apply for a loan from the interested lender within 30 days of notice; or

(2) Seek guaranteed loan assistance under the market placement program in accordance with § 762.110(g) of this chapter.

(f) The borrower will be responsible for any application fees or purchase of stock in conjunction with graduation.

(g) CLs are not subject to graduation requirements under this part.

[72 FR 63309, Nov. 8, 2007, as amended at 75 FR 54016, Sept. 3, 2010]

§ 765.102 Borrower noncompliance with graduation requirements.

Borrower failure to fulfill all graduation requirements within the time-period specified by the Agency constitutes default on the loan. The Agency will accelerate the borrower's loan without offering servicing options provided in 7 CFR part 766.

§ 765.103 Transfer and assignment of Agency liens.

The Agency may assign its lien to the new lender when the borrower is graduating and all FLP debt will be paid in full.

§§ 765.104–765.150 [Reserved]

Subpart D—Borrower Payments

§ 765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks, cash, and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, foreign currency, foreign checks, and sight drafts.

§ 765.152

7 CFR Ch. VII (1–13 Edition)

(b) *Crediting account.* The Agency credits the borrower's account as of the date the Agency receives payment.

§ 765.152 Types of payments.

(a) *Regular payments.* Regular payments are derived from, but are not limited to:

- (1) The sale of normal income security;
- (2) The sale of farm products;
- (3) Lease income, including mineral lease signing bonus;
- (4) Program or disaster-related disbursements from USDA or crop insurance entities; and
- (5) Non-farm income.

(b) *Extra payments.* Extra payments are derived from any of the following:

- (1) Sale of chattel security other than normal income security;
 - (2) Sale of real estate security;
 - (3) Refinancing of FLP debt;
 - (4) Cash proceeds of insurance claims received on Agency security, if not being used to repair or replace the security;
 - (5) Any transaction that results in a loss in the value of any Agency basic security;
 - (6) Refunds of duplicate program benefits or assistance to be applied on CL or EM loans; or
 - (7) Refunds of unused loan funds.
- (c) *Payments from sale of real estate.* Notwithstanding any other provision of this section, payments derived from the sale of real estate security will be treated as regular payments at the Agency's discretion, if the FLP loans will be adequately secured after the transaction.

[72 FR 63309, Nov. 8, 2007, as amended at 75 FR 54016, Sept. 3, 2010]

§ 765.153 Application of payments.

(a) *Regular payments.* A regular payment is credited to a scheduled installment on program and non-program loans. Regular payments are applied to loans in the following order:

- (1) Annual operating loan;
- (2) Delinquent FLP installments, paying least secured loans first;
- (3) Non-delinquent FLP installments due in the current production cycle in order of security priority, paying least secured loans first;
- (4) Any future installments due.

(b) *Extra payments.* An extra payment is not credited to a scheduled installment and does not relieve the borrower's responsibility to make scheduled loan installments, but will reduce the borrower's FLP indebtedness. Extra payments are applied to FLP loans in order of lien priority except for refunds of unused loan funds, which shall be applied to the loan for which the funds were advanced.

§ 765.154 Distribution of payments.

The Agency applies both regular and extra payments to each loan in the following order, as applicable:

- (a) Recoverable costs and protective advances plus interest;
- (b) Deferred non-capitalized interest;
- (c) Accrued deferred interest;
- (d) Interest accrued to date of payment; and
- (e) Loan principal.

§ 765.155 Final loan payments.

(a) *General.* (1) Unless the Agency has reservations regarding the validity of the payment, the Agency may release the borrower's security instruments at the time payment is made, if the borrower makes a final payment by one of the following methods:

- (i) Cash;
- (ii) U.S. Treasury check;
- (iii) Cashier's check; or
- (iv) Certified check.

(2) Security instruments will only be released when all loans secured by the instruments have been paid in full or otherwise satisfied.

(3) The Agency will return the paid note and satisfied security instruments to the borrower after the Agency processes the final payment and determines that the total indebtedness is paid in full.

(b) *Borrower refunds.* If the borrower refunds the entire loan after the loan is closed, the borrower must pay interest from the date of the note to the date the Agency received the funds.

(c) *Overpayments.* If an Agency miscalculation of a final payment results in an overpayment by the borrower of less than \$10, the borrower must request a refund from the Agency in writing. Overpayments of \$10 or more automatically will be refunded by the Agency.